

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Henry Whitlock

Date application filed with the Town Clerk: September 22, 2005

Nature of request: A Special Permit for a flag lot under Sections 6.3 of the Zoning Bylaw

Address: Pomeroy Lane (Map 20C, Parcel 19, R-N and R-LD/FC Zoning Districts)

Legal notice: Published on October 5th and 12th, 2005 in the Daily Hampshire Gazette and sent to abutters on October 4, 2005.

Board members: Tom Simpson, Ted Rising and Hilda Greenbaum

Submissions: The petitioner submitted the following:

- A survey plan of the proposed flag lot, prepared by Harold Eaton and Associates, Inc, dated 12/10/03
- A map showing the wetlands on the property, the proposed house location, barn location and the location of the shared driveway with the adjacent frontage lot, prepared by New England Environmental, Inc., dated 8/31/05
- A management plan for the shared driveway for the proposed flag lot and a second lot, received 11/10/05
- A revised site plan of the land showing the fill needed, the proposed driveway and proposed 16-foot culvert under the driveway, prepared by Ainsworth Associates, dated 11/17/05

Town staff submitted the following:

- A memo from the Planning Department outlining dimensional requirements and other Town Board reviews of the application, dated 10/14/05.
- A memo from the Town Engineer with recommendations for the proposed driveway and drainage, dated 11/10/05. A follow-up email about the water/sewer lines was sent on 11/14/05.
- A Determination of Applicability from the Conservation Commission, authorized 11/1/05

Site Visit: October 18, 2005

The Board met with the applicant at the site. They observed:

- The adjoining farmland and flat, open area of the proposed lot
- The drainage swale parallel to Pomeroy Lane running along the front edge of the property
- The approximate three-foot drop from Pomeroy Lane onto the site
- The markers outlining the wetlands and buffer zones at the rear of the proposed flag lot

Public Hearing: October 20, 2005

Mr. Whitlock and his lawyer, Jonathan Edwards, spoke to the application. Mr. Whitlock gave the following information:

- A single family house is proposed for the flag lot
- A shared driveway is proposed for the flag lot and the adjoining frontage lot, which was also part of the Nanartonis family farm.
- The zoning district is Neighborhood Residential for the frontage lot and part of the proposed flag lot, but changes to Low Density Residential/Farmland Conservation for the buildable section of the flag lot.
- The dimensions of the flag lot exclusive of the access strip is 30,000 square feet, the maximum area allowed in a Farmland Conservation District
- The frontage lot adjacent to the flag lot has 133 feet of frontage and is 20,000 square feet in area
- The access strip of the proposed flag lot is 40 feet wide and 150 feet long
- The lot can be connected to town water and sewer from Pomeroy Lane.
- Access to the Nanartonis farmland to the north of the proposed lots will be off West Street. There also is an access strip to the east of the proposed lots.
- The Nanartonis family is negotiating with the State and Town for the farm to become part of the Agricultural Preservation Restriction (APR) program

Board Chair Tom Simpson made several points about the proposal:

- If fill is to be brought onto the site, the Board needs to know how much will be needed and whether it falls under the regulations of Section 5.10 of the Zoning Bylaw, filling of land.
- A management plan will be needed for the shared driveway.
- The Board will need to hear the reviews of the proposal from the Conservation Commission and the Farm Committee.

Mr. Whitlock stated that several feet of fill will be needed for the driveway and house location. He will provide the information for the amount of fill needed.

Ms. Greenbaum stated that the drainage ditch that runs parallel to Pomeroy is about three feet below the level of Pomeroy Lane. The Department of Public Works may want the petitioner to put in a culvert under the proposed shared driveway.

Mr. Simpson stated that the Board needs a written report from the Town Engineer, a site plan, and all of the extra information he stated above before the Board can make a decision.

The Board agreed to continue the hearing to November 14, 2005 at 6 pm.

Continued Public Hearing: November 14, 2005

The applicant, his lawyer Mr. Edwards, and the landowner Bill Nanartonis were present to speak to the petition.

Mr. Simpson opened the continued hearing and noted the recently submitted materials for the record:

- A site plan outlining the elevations, the areas to be filled, the water/sewer lines, etc.
- A management plan for the shared driveway
- Two letters from Jason Skeels, Town Engineer, with drainage, etc. requirements

The Board reviewed the site plan, which showed the present contour lines (light lines) and the elevations after extra fill is added (darker lines.) The petitioner stated that the land in the surrounding area is fairly flat. The elevations range from 95 to 99 feet on the property, and are somewhat lower (90 feet) to the north for the farmland. The area around the proposed house location would be filled by three feet, and about two to three feet for the shared section of the driveway. The amount of proposed fill around the house site is 300 cubic yards, and the proposed fill for the driveway is 200 cubic yards.

Ms. Greenbaum inquired whether the Zoning Bylaw has a maximum amount of area allowed to be filled. Section 5.10 of the Bylaw is applicable when the existing grade of any portion of a property 5,000 square feet or more is raised by an average of two feet or more. This application falls under this minimum standard and requires a Special Permit for the fill. However, Section 5.10 does not stipulate a maximum area of land involved or maximum amount of fill allowed at this time.

Mr. Whitlock gave the following additional information:

- The swamp created by the beavers to the north is far away from the property under consideration, and does not impact the proposed building lots. It has impacted the farmland though.
- The drainage ditch along Pomeroy Lane is where a culvert under the driveway will be required. The Town Engineer has determined the specifics of the culvert.
- The Town Engineer also determined where the water/sewer lines could be placed. They must be 10 feet apart, and are hand-drawn on the plan.
- Utilities will be underground.
- The electric company will propose the location of the electric pole, which is then reviewed and approved by the Select Board.
- The proposed barn would be located in the back corner of the lot, to be built in the future.

The Board had a series of concerns about drainage within and flowing off the property. Mr. Whitlock's responses were:

- The fill is needed because of the high water table and the clay soil in the area.
- The drainage from the proposed filled areas (driveway and house) will be directed to the low areas of the land
- The fill will be added to the property next spring, and will be done at one time.
- A perimeter drain will be placed around the foundation of the house.
- A silt fence will be placed all around the construction area, as close to the work area as possible, as required by the Conservation Commission. The hay bales will keep the fill away from the wetlands in the back of the property
- The culvert under the driveway will be built according to the Town Engineer's design. He will determine the weight that the culvert must support.
- The house and fill associated with it will be within the 100-foot buffer zone, but will remain outside of the 30-foot "no disturb buffer" erosion control line.

Mark Snow, Assistant Building Commissioner, stated that the perimeter drain around the house is covered by the Building Code.

The Board inquired about access to the farmland behind the proposed flag lot. The Farm Committee had expressed concern about access from Pomeroy Lane because of wetlands. Mr. Whitlock said that the access strip is 50 feet wide, and the wetlands do not impede passage.

Bill Nanartonis, Montague Road, Leverett, said that this land was the family farm for many years. What is left after subdivision is 15.72 acres of farmland, plus the family farmhouse on West Street.

Mr. Nanartonis stated that there also is a 20-foot right of way for the farm off West Street. The family actively farmed the land for years – they had animals and crops, but no hay. Then the Wagner family has used it for hay more recently. The family used to plow back into what is now wetland, before the beavers took over Plum Brook.

Mr. Nanartonis said that if the farmland goes into APR, some of the property along West Street, including the family farmhouse, will be kept out of it for access and flexibility. They are changing their perspective as to how the land can be used. Perhaps a nursery will be a viable operation in the future for the 15.72 acres left, Mr. Nanartonis stated

One member of the public spoke to the petition. Charles Atwood, 69 Pomeroy Lane, said that he lives directly across the street from the site and knows the drainage very well for the area. He would like to know who is providing the drainage work for the project. The soil is clay for about 6 feet in depth, and if a drainage swale is built, it will become as big as trout stream when it rains. That happens on his property, he said.

Mr. Nanartonis stated that drainage to the south of Pomeroy Lane is difficult because there is no where for the water to go. Prior to the building up of Pomeroy, the water drained north into Plum Brook. The road is now three feet above the land, and it interrupts the natural flow of the water. As a result, water just sits on top of the clay on the southern side of Pomeroy, and backs up. On the northern side of the road, where the property under consideration is located, the water drains off to the north, and is able to soak into the ground more readily.

Mr. Simpson asked what hazards or detrimental results might occur from the run-off from the residential lots that all slope towards the Nanartonis farmland.

Mr. Nanartonis said that the farmland is “heavy” (i.e., clay), so that the crops are planted later in the spring than at other places, and harvesting is later as well. But there has been no noticeable impact from the houses along Pomeroy Lane on the farming per se.

Because the house on the flag lot will be located within the Farmland Conservation District, the Board did suggest that limiting chemicals, salt, de-icing materials, herbicides and other hazardous lawn or driveway chemicals should be required.

Ms. Greenbaum asked about requiring a gravel driveway rather than a paved one, given the drainage problems. The petitioner replied that the land is mainly flat – a two-foot drop over 15 feet – so that the run-off from the driveway should not be a problem.

Mr. Rising asked about the drainage ditch parallel to Pomeroy Lane. It is located about 2-3 feet from the roadway and about 3 feet below the street level. The swale is needed under the driveway, but what happens to the water in the ditch? The petitioner stated that the water is absorbed into the ground eventually.

Mr. Whitlock said that the driveway plan will be submitted to the Town Engineer for his approval.

Ms. Greenbaum moved to close the evidentiary part of the hearing. Mr. Rising seconded the

motion and the vote was unanimous.

Public Meeting:

The Board discussed the application in terms of the amount of fill brought into the area and potential drainage problems. The Board decided that all sections of 5.10 of the Zoning Bylaw, filling of land, are relevant to this application. All of the sections will then become part of the conditions for the Special Permit.

In addition, the Board decided that a performance bond should be set. Section 5.104 of the Zoning Bylaw states that the Board may require one to ensure that application of fill and subsequent landscaping will satisfy the provisions of Section 5.10

The Board concluded that the petitioner needed to submit a better site plan, with the wetlands and buffers (100' & 30') included. A more clear picture of where the water/sewer lines are proposed and the final amount of fill (cubic yards) needed should be on the plans as well.

The Board approved the Common Driveway Agreement for the proposed flag lot and the adjacent frontage lot as submitted. The Board also found that a 12-foot width of the driveway was sufficient for the common driveway, given that it is not long, accesses only two houses, and will have a two-foot shoulder on each side. Therefore the Board voted to waive, under Section 7.9 of the Zoning Bylaw, the 16-foot width requirement for common driveways under Section 7.712.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.38 & 10.381 – The proposal is suitably located in the area since Pomeroy Lane is a residential area with largely single-family homes. The Bylaw does allow for flag lots in a Farmland Conservation District, but on a reduced-size lot, 30,000 square feet, as this proposal provides.

10.382 & 10.384 – The proposal will not constitute a nuisance due to water pollution, flood, dust, etc., because enough safeguards will be placed via the conditions of this Special Permit to control run-off or drainage problems impacting abutters or the adjacent farmland.

The proposed culvert at the entrance of the driveway should help protect against flooding along the roadway as well.

10.383 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians, because the driveway will be shared and its design will be supervised by the Town Engineer. In addition, a 50-foot buffer and entrance way for the farmland will be preserved to the east of the frontage lot.

10.385 & 10.390 – The proposal reasonably protects the adjoining premises against detrimental uses, and ensures protection from flood hazards, since the decisions from both the Conservation Commission and the Board of Appeals include conditions pertaining to drainage, elevation of buildings, effect of fill, and the use of hazardous chemicals.

10.386, 10.387 & 10.388 – The proposal ensures that it is in conformance with parking regulations, since the final plans for the house, driveway and parking shall be subject to approval by the Board prior to construction.

10.389 – The proposal includes provisions for town water and sewer. It also provides methods of drainage for surface water.

10.394 & 10.396 – The proposal avoids, to the extent feasible, impact on grade changes, scenic views and wetlands because the conditions of the permit will require proper grading of the areas filled, and will require a performance bond to ensure maximum protection.

10.398 The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it provides safeguards for potential wetland and drainage problems, thus protecting the safety and general welfare of the inhabitants in the area.

Zoning Board Decision:

Ms. Greenbaum moved to approve the application for a Special Permit, with conditions. Mr. Rising seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to APPROVE a Special Permit for a flag lot and the filling of land under Sections 6.3 and 5.10 of the Zoning Bylaw, on the premises at Pomeroy Lane (Map 20C, Parcel 19, R-N and R-LD/FC Zoning Districts), with conditions.

TOM SIMPSON

TED RISING

HILDA GREENBAUM

FILED THIS _____ day of _____, 2005 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2005.
NOTICE OF DECISION mailed this _____ day of _____, 2005
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2005,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit for a flag lot and the filling of land under Sections 6.3 and 5.10 of the Zoning Bylaw, on the premises at Pomeroy Lane (Map 20C, Parcel 19, R-N and R-LD/FC Zoning Districts), as requested by applicant Henry Whitlock and subject to the following conditions:

1. Site improvements shall be constructed in accordance with the site plan showing the wetlands, elevations before and after applying fill, the amount of fill needed, water & sewer lines approved by the Board at a public meeting November 17, 2005.
2. The residence shall be limited to single-family.
3. Maintenance and management of the shared driveway shall be as described in the Driveway Agreement approved by the Board on November 17, 2005.
4. All fill shall be applied in accordance with Section 5.10 of the Zoning Bylaw. Namely:
 - 5.100 – No slope created by the filling operation shall be finished at a grade in excess of the natural angle of repose of the materials.
 - 5.101 – All filled areas which are not to be built upon within one year shall, upon completion of the operation, be covered with not less than four (4) inches of loam, brought to the finish grade, seeded and mulched in a satisfactory manner
 - 5.102 – The filling of land shall not cause erosion or sedimentation due to improper drainage design or management.
 - 5.103 – Grading, seeding and planting shall be completed in one calendar year. Barriers for control of erosion and drainage shall be in place until the building is complete.
5. Prior to issuance of a building permit, the petitioner shall provide a performance bond of \$10,000.00 payable to the Town of Amherst, to ensure satisfactory compliance with the requirements of Section 5.10 of the Zoning Bylaw and Condition #4 above.
6. Final plans for the location of the house, floor plans, the finished floor elevation of the house, exterior lighting and landscaping shall be submitted to the Board for approval at a public meeting prior of issuance of a building permit.
7. In accordance with Section 7.90 of the Zoning Bylaw, the provisions of Section 7.712 are hereby modified such that the common driveway shall be twelve (12) feet wide, with two-foot shoulders on either side whose subgrade is reinforced to accommodate the weight of emergency vehicles.
8. Use of sodium chloride, pesticides, and other hazardous lawn & garden chemicals is prohibited on the property.
9. This Special Permit is subject to Section 14 of the Zoning Bylaw, Phased Growth. Development authorization is available as of January, 2006.

TOM SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE